

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LAURA MCFEELEY, ET AL. :
 :
v. : Civil Action No. DKC 12-1019
 :
JACKSON STREET ENTERTAINMENT, :
LLC, ET AL. :

MEMORANDUM OPINION

Presently pending and ready for resolution in this Fair Labor Standards Act ("FLSA") case is an unopposed motion for attorney's fees and costs filed by Plaintiffs. (ECF No. 136). The court now rules, no hearing being deemed necessary. Local Rule 105.6. For the following reasons, Plaintiffs' motion will be granted in part and denied in part.

I. Background

Additional background can be found in the United States Court of Appeals for the Fourth Circuit's opinion affirming judgment for Plaintiffs. *See McFeeley v. Jackson Street Entm't, LLC*, --F.3d--, 2016 WL 3191896 (4th Cir. June 8, 2016). Plaintiff Laura McFeeley initiated this collective action under the FLSA and the Maryland Wage and Hour Law ("MWHL") by filing a complaint on April 3, 2012, which was amended to add a second named plaintiff. (ECF Nos. 1; 3). Defendants Jackson Street Entertainment, LLC; Risque, LLC; Quantum Entertainment Group,

LLC; Nico Enterprises, Inc.; XTC Entertainment Group, LLC; and Uwa Offiah (collectively, the "Defendants") answered the amended complaint and asserted counterclaims. (ECF No. 4). The court granted in part and denied in part Plaintiffs' motion to dismiss the counterclaims. (ECF Nos. 12; 13). On May 6, 2013, Plaintiffs amended their complaint for a second time to add individuals who had opted-in to the certified class. (ECF No. 31). After the court granted Plaintiffs' motion for partial summary judgment (ECF Nos. 56; 57), the remaining issues went to trial in February 2015. Following a three-day jury trial, the jury returned verdicts as to the amount of compensatory damages to which each plaintiff is entitled. (See ECF No. 87). On February 10, 2015 the court entered judgment in favor of Plaintiffs and against Defendants; jointly and severally for a total amount of \$265,276.50, which included compensatory and liquidated damages. (ECF No. 93).

On May 19, 2015, Plaintiffs filed a motion to recover attorney's fees and costs. (ECF No. 101). After the Defendants filed an appeal with the Fourth Circuit, this court stayed the action and deferred ruling on Plaintiffs' motion until after the adjudication of the appeal. (ECF No. 123). On April 13, 2016, the undersigned granted in part and denied in part a motion to compel, for contempt, and for sanctions filed by Plaintiffs and awarded Plaintiffs \$1,800.00 in attorney's fees for work related

to the motion. (ECF No. 134). On June 8, the Fourth Circuit affirmed the judgment in favor of Plaintiffs. (ECF No. 135). On June 21, Plaintiffs filed the pending motion for attorney's fees and costs, which requests \$170,970.00 in attorney's fees and \$6,903.96 in costs. (ECF No. 136). Defendants have not responded and the time to do so has passed. On July 8, the Fourth Circuit denied Defendants' petition for a rehearing *en banc*, and the mandate was issued July 18. (ECF Nos. 138; 139).

II. Standard of Review

In any action under the FLSA, "[t]he court . . . shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." 29 U.S.C. § 216(b). The payment of attorney's fees and costs to employees who prevail on FLSA claims is mandatory. "The amount of the attorney's fees, however, is within the sound discretion of the trial court." *Burnley v. Short*, 730 F.2d 136, 141 (4th Cir. 1984). The MWHL also allows for the recovery of attorney's fees and costs. See Md. Code Ann., Lab. & Empl. § 3-427.

"The proper calculation of an attorney's fee award involves a three-step process. First, the court must 'determine the lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate.'" *McAfee v. Boczar*, 738 F.3d 81, 88 (4th Cir. 2013) (quoting *Robinson v. Equifax Info. Servs.*,

LLC, 560 F.3d 235, 243 (4th Cir. 2009)). In assessing reasonableness, the Fourth Circuit has instructed district courts to consider what are known as the *Johnson* factors, which are: (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases. *Id.* at 88 n.5 (citing *Barber v. Kimbrell's Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978)). "Next, the court must 'subtract fees for hours spent on unsuccessful claims unrelated to successful ones.' Finally, the court should award 'some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff.'" *Id.* (quoting *Robinson*, 560 F.3d at 244). The Fourth Circuit has noted that a district court's determination of attorney's fees should stand unless the district court abused its discretion by reaching a decision that

is "'clearly wrong' or committing an 'error of law.'" *Id.* at 88 (quoting *Brodziak v. Runyon*, 145 F.3d 194, 196 (4th Cir. 1998)).

III. Analysis

A. Lodestar Calculation

1. Hourly Rate

"[T]he burden rests with the fee applicant to establish the reasonableness of a requested rate." *Robinson*, 560 F.3d at 244 (quoting *Plyler v. Evatt*, 902 F.2d 273, 277 (4th Cir. 1990)). "In addition to the attorney's own affidavits, the fee applicant must produce satisfactory specific evidence of the prevailing market rates in the relevant community for the type of work for which he seeks an award," including, for example, "affidavits of other local lawyers who are familiar both with the skills of the fee applicants and more generally with the type of work in the relevant community." *Id.* at 244, 245 (internal quotation marks omitted). The Local Rules provide non-binding guidelines regarding reasonable hourly rates that vary depending on how long an attorney has been admitted to the bar. Local Rules, App'x B.¹

¹ The Local Rules put forth the following guidelines: \$150-225 for lawyers admitted to the bar less than five years; \$165-300 for lawyers admitted for five to eight years; \$225-350 for lawyers admitted for nine to fourteen years; \$275-425 for lawyers admitted for fifteen to nineteen years; and \$300-\$475 for lawyers admitted for twenty years or more. The rate for paralegals and law clerks is \$95-150.

Plaintiffs request the following rates for attorneys who worked on this case:

- Gregg Greenberg (5-9 years admitted to the bar during the course of this litigation): \$295
- Michael Amster (3-7 years): \$295
- John McDonough (3-7 years): \$250
- Amy DiBiasio (1-4 years): \$225
- Jason Friedman (1-4 years): \$225
- Paralegals and law clerks: \$135

(ECF No. 136, at 8-9). Plaintiffs argue that the rates are reasonable because they fall within the guidelines in the Local Rules. (*Id.*). Plaintiffs also submit declarations from Mr. Amster, their lead counsel, and Mitchell L. Batt, a local Maryland attorney, to support the reasonableness of the requested rates. (ECF Nos. 136-3; 136-4).

Because Plaintiffs provide sufficient support for the requested billing rates and because their motion is unopposed, the rates will, in large part, be granted. The rates of Mr. Amster and Mr. McDonough, however, will be reduced for a portion of the hours spent on this action. Mr. Amster was admitted to the bar in September 2009 and Mr. McDonough was admitted in December 2009, which means that they were admitted to the bar for less than five years until September and December 2014,

respectively. (ECF No. 136-3, ¶¶ 1-2). Although their requested rates are within the guidelines for an attorney admitted to the bar for five to eight years, they are higher than the guidelines for someone admitted less than five years, and Plaintiffs do not articulate why a higher rate is justified for the entire time period. Accordingly, the rate for Mr. Amster and Mr. McDonough will be reduced to \$225 for work performed prior to the appropriate month in 2014. All other requested rates are reasonable in light of the declarations provided and the guidelines in the Local Rules.

2. Hours Worked

Plaintiffs provide itemized time records that list the date of the work, who performed the work, the time spent, a brief description of the work, and the litigation phase for which the work was performed. (ECF No. 136-1). Mr. Amster asserts that Plaintiffs' counsel worked a total of 655.1 hours on this case and exercised billing judgment by eliminating 30.7 hours for "excessive or unnecessary work." (ECF No. 136-3 ¶ 6). Many of the removed entries appear to be for work done on behalf of dismissed plaintiffs.² In the end, Plaintiffs seek recovery for 624.4 hours of work. (*Id.*). A close review of the billing records reveals that the number of hours requested is

² As Plaintiffs note, eight removed hours are for work performed in relation to their motion to compel, for which they have already been compensated.

reasonable. This collective action stretched over more than four years and was defended aggressively by Defendants. It presented some relatively novel employment law issues, included multiple parties on both sides, and ultimately went to trial and was heard on appeal in the Fourth Circuit. In short, this was a fairly complex case that required counsel to spend significant time litigating, and Plaintiffs' request of 624.4 hours is reasonable. Accordingly, after modifying the billing rates as discussed in the preceding section, the lodestar figure is \$166,963.00.

B. Adjustments to the Lodestar

To the extent that any *Johnson* factors remain after the determination of the lodestar, none support a reduction. (See ECF No. 136, at 9-15); see also *Andrade v. Aerotek, Inc.*, 852 F.Supp.2d 637, 646 (D.Md. 2012) (noting that "most" of the *Johnson* factors "are subsumed in the rate and hour analysis). Furthermore, Plaintiffs have removed the hours spent working solely on behalf of dismissed plaintiffs. Finally, Plaintiffs' level of success supports awarding the full lodestar amount. The Fourth Circuit has described the analysis of the level of success as the third step of a fee calculation, noting that courts "should award some percentage of the remaining amount, depending on the degree of success enjoyed by the plaintiff." *McAfee*, 738 F.3d at 88 (citation and internal quotation marks

omitted). Other times, such a calculation is referred to as an additional focus on the eighth *Johnson* factor, which directs a court to look at "the amount in controversy and the results obtained." See *Jackson v. Estelle's Place, LLC*, 391 F.App'x 239, 243 (4th Cir. 2010). As the Fourth Circuit recently articulated, a court should "reduce the award if 'the relief, however significant, is limited in comparison to the scope of the litigation as a whole.' . . . What the court must ask is whether 'the plaintiff achieve[d] a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award.'" *Doe v. Ray*, --F.App'x--, 2016 WL 4191505, at *9 (4th Cir. Aug. 9, 2016) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434, 436 (1983)).

Here, Plaintiffs recovered a significant amount in damages, including liquidated damages. Moreover, the FLSA is "a statute which Congress thought was necessary to provide 'fair labor standards' for employees, including those marginalized workers unable to exert sufficient leverage or bargaining power to achieve adequate wages," such as Plaintiffs. *McFeeley*, 2016 WL 3191896, at *8. Plaintiffs' success helped secure the rights protected by the FLSA for themselves and others. Accordingly, no reduction to the lodestar is warranted, particularly because Defendants did not oppose Plaintiffs' motion. Plaintiffs will be awarded \$166,963.00 in attorney's fees.

C. Costs

Plaintiffs seek to recover \$6,903.96 in litigation costs. In support of their request, Plaintiffs provide an itemized list detailing each cost (ECF No. 136-2) as well as Mr. Amster's declaration attesting to the accuracy and reasonableness of the costs (ECF No. 136-3 ¶ 9).

[T]he Fourth Circuit has held that district courts have discretion to determine the costs that will be assessed against losing defendants in FLSA cases. *Roy v. Cnty. Of Lexington, S.C.*, 141 F.3d 533, 549 (4th Cir. 1998). . . . [C]osts charged to losing defendants may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988). Types of costs charged to losing defendants include "necessary travel, depositions and transcripts, computer research, postage, court costs, and photocopying." *Almendarez v. J.T.T. Enters. Corp.*, No. JKS-06-68, 2010 WL 3385362, at *7 (D.Md. Aug. 25, 2010).

Andrade, 852 F.Supp.2d at 644. In addition, the Local Rules provide that "[m]ileage is compensable at the rate of reimbursement for official government travel in effect at the time the expense was incurred." Local Rule, App'x B. The following requested costs are clear, reasonable, and will be awarded in their entirety: \$55.00 for a tracer invoice; \$88.50 for mileage; \$5.32 for postage for correspondence with defense counsel; a \$350.00 filing fee; \$2,806.67 for expert witness

fees; and \$3,173.79 for deposition transcripts. Postage requested for correspondence to the dismissed plaintiffs will not be awarded. The following entries are vague or unclear and will not be awarded because the court is unable to determine their reasonableness: "ck 3359;" "Circuit Court for PG County;" and "Largo, Maryland 20774. Deposition." See *Andrade*, 852 F.Supp.2d at 645 (denying a request for certain costs because the "entries lack[ed] the basic level of detail sufficient for the court to understand the nature of the costs or why they should be granted"). Accordingly, Plaintiffs will be awarded \$6,479.28 in costs.

IV. Conclusion

For the foregoing reasons, Plaintiffs' motion for attorney's fees and costs will be granted in part and denied in part. Judgment will be entered in favor of Plaintiffs in the amount of \$166,963.00 for attorney's fees and \$6,479.28 for costs. A separate order will follow.

/s/
DEBORAH K. CHASANOW
United States District Judge